

[NOTE: Each PPA request is evaluated on its own merits. The full text of recent prospective purchaser agreements is provided for information purposes only. The Model Prospective Purchaser Agreement will serve as a starting point for structuring future agreements.]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

| | | |
|--|---|--|
| IN THE MATTER OF: |) | |
| |) | |
| TRANSCOMM REALTY |) | EPA DOCKET NO. CERCLA-1-99-0076 |
| TRUST AND TRANSCOMM, |) | |
| INC. |) | |
| |) | |
| UNDER THE AUTHORITY OF |) | AGREEMENT AND COVENANT |
| THE COMPREHENSIVE |) | NOT TO SUE RE: INDUSTRI-PLEX |
| ENVIRONMENTAL RESPONSE |) | SUPERFUND SITE - 210 NEW BOSTON |
| COMPENSATION AND |) | STREET |
| LIABILITY ACT OF 1980, 42 |) | |
| U.S.C. § 9601, <u>et seq.</u>, as amended |) | |

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue (“Agreement”) is made and entered into by and between the United States, on behalf of the United States Environmental Protection Agency (“EPA”), and Transcomm Realty Trust, a Massachusetts realty trust, and Transcomm, Inc., a Massachusetts corporation (together “Settling Respondent”). (The United States, on behalf of EPA, and the Settling Respondent together are the “Parties”).

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601, et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. Transcomm Realty Trust is a Massachusetts realty trust. Transcomm, Inc. is a Massachusetts corporation. The Settling Respondent intends to utilize 210 New Boston Street

(the "Property"), a portion of the Industri-Plex Superfund Site ("the Site"), for a school transportation facility ("Settling Respondent's Facility").

4. The Site covers approximately 245 acres in the City of Woburn, Middlesex County, Massachusetts. In the past, portions of the Site were used for industrial and manufacturing operations. Currently, part of the Site is used for a variety of commercial activities and part is unused land.

5. The Property consists of approximately 2.09 acres, more or less, located in Woburn, Massachusetts, as more specifically set forth on Exhibit 1 attached hereto and made a part of this Agreement. Arsenic, lead and chromium have been found in soil at portions of the Property. EPA's investigation of the groundwater contamination at the Property and the Site has not been finalized, but EPA has found toluene, benzene and arsenic in the groundwater at portions of the Site.

6. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII (Certification), VIII (United States' Covenant not to Sue), IX (Reservation of Rights), and X (Settling Respondent's Covenant not to Sue), the potential liability of the Settling Respondent for the Existing Contamination at the Property which might otherwise result from the Settling Respondent becoming an owner and/or operator of part of the Site.

7. The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

8. The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
- b. "Consent Decree" shall mean the consent decree, dated December 14, 1988, and entered by the United States District Court on April 24, 1989, in United States v. Stauffer Chemical Company, et. al., No. 89-0196-MC (D. Mass.).
- c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- d. "Existing Contamination" shall mean any hazardous substances, hazardous wastes, pollutants or contaminants present or existing on or under the Property as of the date this Agreement is executed by the Settling Respondent.
- e. "Institutional Controls" shall mean such covenants, conditions, and restrictions and other equivalent requirements and controls developed pursuant to the Consent Decree and the Record of Decision for soil remediation dated September 30, 1986, and/or pursuant to any future record of decision or action memoranda for the Site to ensure the integrity and effectiveness of the response actions at or pertaining to the

Site.

- f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).
- g. "MADEP" shall mean the Massachusetts Department of Environmental Protection.
- h. "Parties" shall mean the United States, on behalf of EPA, and the Settling Respondent.
- i. "Property" shall mean that portion of the Site known as 210 New Boston Street and more particularly described in Exhibit 1 attached hereto and made a part of this Agreement.
- j. "Section" shall mean a portion of this Agreement identified by a roman numeral.
- k. "Settling Respondent" shall mean Transcomm Realty Trust and Transcomm, Inc.; and any person or entity to whom the rights, benefits and obligations of this Agreement have been assigned or transferred pursuant to Section XI (Parties Bound/Transfer of Covenant) of this Agreement.
- l. "Site" shall mean the Industri-Plex Superfund Site, as that term is defined in the Consent Decree, encompassing approximately 245 acres, located in Woburn, Middlesex County, Massachusetts, depicted generally on the map attached hereto as Exhibit 2, and described in more detail in the paragraph attached hereto as Exhibit 3. The Site includes the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have been released.

- m. “United States” shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

10. The Site is a “facility” as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11. Portions of the Site, including a portion of the Property, contain soil contaminated with hazardous substances such as arsenic, chromium and lead. The contaminated soil at the Site, including the contaminated soil at the Property, is currently being remediated as part of the remediation for the Site, as described in EPA's Record of Decision ("ROD") for soil remediation, dated September 30, 1986. The remediation work is being performed under the terms of the Consent Decree. Portions of the Site, including the Property, are underlain with contaminated groundwater. The groundwater is currently being remediated by interim groundwater response measures as part of the ROD. EPA is conducting an investigation of the groundwater to determine if it is necessary to conduct further remediation of the groundwater underlying the Site, including groundwater underlying the Property.

12. The contamination at the Site constitutes hazardous substances under CERCLA.

13. The Settling Respondent is a prospective “owner” and/or “operator” of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

14. The Settling Respondent represents, and for the purposes of this Agreement EPA relies upon those representations, that the Settling Respondent’s involvement with the Property has been limited to the following:

- a. evaluating the Property for purposes of purchasing the Property; and
- b. negotiating to purchase the Property.

The Settling Respondent represents that none of the activities listed in subparagraphs (a) and (b) of this paragraph has caused or contributed to the release or threatened release of a hazardous substance at the Site under Section 107 of CERCLA, 42 U.S.C. Section 9607.

IV. PAYMENT BY SETTLING RESPONDENT AND OTHER CONSIDERATION

15. In consideration of and in exchange for the United States' covenant not to sue in Section VIII herein, Settling Respondent agrees to pay to EPA the sum of \$30,000, plus Interest accrued from the earliest date of Settling Respondent's signature of this Agreement. Such payment shall be made within 30 days of the effective date of this Agreement. The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region, Docket number, and Site/Spill ID# 0107, and DOJ case number 90-11-2-228-3. Settling Respondent shall forward the certified check(s) to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197 M, Pittsburgh, PA 15251. Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions).

16. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall continue to accrue Interest up until the date of full satisfaction of all amounts due and owing pursuant to the terms of this Agreement.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST/INSTITUTIONAL CONTROLS

17. On the day that it acquires title to the Property, and continuing each day thereafter, the Settling Respondent shall grant to EPA, and the Commonwealth of Massachusetts, their

authorized officers, employees, representatives, and all other persons performing response actions under EPA or Commonwealth oversight, an irrevocable right of access at all reasonable times to the Property and, to the extent access to such other property is controlled by the Settling Respondent, to any other property to which access is required for the implementation, or operation and maintenance, of response actions at the Site, for the purposes of performing and overseeing response actions at the Site under federal law and/or state law. When practicable, EPA agrees to provide reasonable notice to the Settling Respondent of the timing of non-emergency response actions to be undertaken at the Property.

18. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et. seq., and any other applicable statute or regulation, including any amendments thereto.

19. Within fifteen days after the effective date of this Agreement, the Settling Respondent shall record a certified copy of this Agreement with the Registry of Deeds and/or Registry District of the Land Court, Middlesex County, Massachusetts. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

20. Prior to any transfer of any interest in the Property by the Settling Respondent, the Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation as is required by this Agreement.

21. Prior to the conveyance of any interest in the Property, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Respondent shall give written notice of this Agreement and the Institutional Controls to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of this Agreement and Institutional Controls was given to the grantee. In the event of any such conveyance, the obligations of the Settling Respondent to provide or secure access pursuant to Section V (Access and Institutional Controls) shall continue to be met by the Settling Respondent to the extent the Settling Respondent retains any interest in or control over the Property. To the extent set forth in Paragraph 41 of this Agreement, the conveyance or transfer of any interest in the Property shall not release or otherwise affect the liability of the Settling Respondent to comply with all provisions of this Agreement.

22. Pursuant to this Agreement, the Settling Respondent shall take such actions as the United States directs to secure, modify, and/or implement Institutional Controls on the Property as required by the Consent Decree and/or the Record of Decision for the Site for soil remediation dated September 30, 1986, and/or pursuant to any future Record of Decision or Action Memoranda for the Site for implementation of response actions (including, without limitation, design, construction, operation, maintenance, monitoring, and use restrictions) for or pertaining to the Site.

23. The Settling Respondent's securing, modification, and/or implementation of Institutional Controls shall require the approval of EPA and include, without limitation, the filing and recordation in the Registry of Deeds, Middlesex County, Commonwealth of Massachusetts, declaration(s) or modification(s) of declaration(s) of covenants, conditions and restrictions that

run with the Property, setting forth the Institutional Controls applicable thereto. All such declaration(s), or modification(s) of such declaration(s), shall be enforceable by the United States and the Commonwealth of Massachusetts, and shall provide that these persons have the right to inspect the Property to determine whether the declaration(s), or modification(s) to the declaration(s), are being complied with. In accordance with Section 104(j) of CERCLA, 42 U.S.C. §9604(j), the United States' interest in the declaration(s), or modification(s) to such declaration(s), shall terminate at such time as EPA determines that the remedial action for the Site is complete.

24. Declaration(s), or modification(s) to such declaration(s), required to be filed pursuant to this Agreement shall conform with local and state law in order to create an enforceable property restriction that runs with the land. If a question arises as to the enforceability of a declaration, or modification to a declaration, under state or local law after it has been filed, the United States may require the Settling Respondents to secure an amended declaration, or an amended modification to a declaration, that is enforceable under state and local law.

25. The Settling Respondent shall ensure that successors in interest to the rights, benefits and obligations conferred upon the Settling Respondent under this Agreement shall provide the same access and cooperation. The Settling Respondent shall ensure that any assignments or transfers of the rights, benefits and obligations conferred upon the Settling Respondent under this Agreement are consistent with this Section, and Sections IV (Work to be Performed) and XI (Parties Bound/Transfer of Covenant) of this Agreement.

VI. DUE CARE/COOPERATION

26. The Settling Respondent shall exercise due care at the Site with respect to the Existing

Contamination and shall comply with all applicable local, state, and federal laws and regulations.

The Settling Respondent shall also comply with all obligations needed to maintain the Institutional Controls, and any future Institutional Controls as well as all obligations under this Agreement relating to response actions.

27. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, may require modification of the Settling Respondent's construction design and/or modification of the Settling Respondent's construction plans and schedules, and may require closure of the Settling Respondent's operations or a part thereof. The Settling Respondent agrees to fully cooperate with EPA, and all other persons performing response actions at the Site under EPA oversight, in the implementation of response actions at the Site, and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with each of the Settling Respondent's operations by such entry and response.

28. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a new release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

29. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to the Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by the Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

30. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount(s) specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against the Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

31. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against the Settling

Respondent with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by the Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest/Institutional Controls), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs);
- b. any liability resulting from exacerbation by the Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;
- c. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Property caused or contributed to by the Settling Respondent, its successors, assignees, lessees or sublessees;
- d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the effective date of this Agreement, not within the definition of Existing Contamination, provided that this subparagraph shall not apply to any hazardous substances, pollutants, or contaminants presently existing at or under the Site that may migrate, through no act or omission of the Settling Respondent, onto or under the Property from the Site and so long as Settling Respondent exercises due care;
- e. criminal liability;
- f. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss; and
- g. liability for violations of local, State or federal law or regulations.

32. With respect to any claim or cause of action asserted by the United States, the Settling

Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

33. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

34. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. The Settling Respondent acknowledges that it is purchasing property where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

35. In consideration of the United States' Covenant Not to Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, including any department, agency or instrumentality, and its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to:

- a. any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through Sections 106(b)(2), 111, 112, 113 of CERCLA, or any other provision of law;

- b. any claims against the United States, including any department, agency or instrumentality of the United States, under CERCLA Sections 107 or 113;
- c. any claims under the United States Constitution or the Tucker Act, 28 U.S.C. § 1491, including claims based on EPA's oversight of response actions or approval of plans for such response activities and implementation of any deed restrictions or other Institutional Controls;
- d. any claims arising out of response activities, including claims based on EPA's selection of response actions, oversight of response activities, or approval of plans for such activities, or the implementation of any deed restrictions or other Institutional Controls;
- e. any claims or causes of action for interference with contracts, business relations or economic advantage; or
- f. any claims for costs, attorneys fees, other fees, or expenses incurred in this action, including claims under 28 U.S.C. § 2412 (including claims under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412(d)).

36. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

37. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on the Settling Respondent, its officers, directors, employees, trustees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

38. The United States' covenant not to sue as set forth in Section VIII is non-transferable except pursuant to this Section.

39. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon the Settling Respondent under this Agreement may be assigned or transferred to any person or entity with the prior written consent of EPA in its sole discretion. Any assignee, transferee, affiliate, successor or foreclosure purchaser approved by EPA pursuant to this Section shall become a Settling Respondent to this Agreement.

40. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the Settling Respondent's rights, benefits and obligations under this Agreement.

41. In the event of an assignment or transfer of the Settling Respondent's rights, benefits and obligations under this Agreement, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any such assignment or transfer, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant

Not to Sue in Section VIII to be available to that party. The Covenant Not to Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA and to comply with all of the terms of this Agreement.

XII. DISCLAIMER

42. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

43. The Settling Respondent agrees to retain and make available to EPA for ten years following the effective date of this Agreement (i) all site studies and investigations relating to environmental conditions at the Property; (ii) all filings made pursuant to the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001-11050, the Massachusetts Toxics Use Reduction Act, Mass. Gen Laws Chapter 21I, or any other statute that requires keeping records of the storage or use of hazardous substances; (iii) all business and operating records, contracts and documents relating to the use and/or disposal of hazardous substances at the Property, not including documents regarding the retail sale of products for household use which products contain hazardous substances. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA. EPA shall have 180 days within which to notify the Settling Respondent that it wants to copy such documents. Such documents may be retained on microfilm, CD-rom, or computer disc, or in their original form. In the event that records are

maintained in a format other than their original form, the Settling Respondent shall certify that the documents are true and accurate embodiments of the originals.

XIV. PAYMENT OF COSTS

44. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment) of this Agreement, the Settling Respondent shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

45. Whenever under the terms of this Agreement, written notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to EPA:

EPA Remedial Project Manager
Industri-Plex Superfund Site
United States Environmental Protection Agency
Region I
One Congress Street, Suite 1100 (HBO)
Boston, MA 02114

with a copy to:

EPA Enforcement Counsel
Industri-Plex Superfund Site
United States Environmental Protection Agency
New England, Region I
One Congress Street, Suite 1100 (SES)
Boston, Massachusetts 02114

As to Settling Respondent:

William Covalucci
Transcomm, Inc.
4-10 Commercial Avenue
Bedford, MA 01730
with a copy to:

John A. Chistolini, Esq.
Chistolini & DeSimone, P.C.
21 McGrath Highway, Suite 201
Quincy, MA 02169

XVI. PUBLIC COMMENT

46. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVII. EFFECTIVE DATE

47. The effective date of this Agreement shall be the later of the date upon which both of the following conditions have been satisfied (i) EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and response to any public comments received; and (ii) Settling Respondent acquires title to the Property.

XVII. TERMINATION

48. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest/Institutional Controls) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

49. With regard to claims for contribution against the Settling Respondent based solely on the Settling Respondent's status as an owner or operator of the Property, the Parties hereto agree that the Settling Respondent is entitled to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and all costs incurred or to be incurred by the United States or any other person for any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Agreement including any resulting physical or chemical breakdown of these hazardous substances, pollutants or contaminants.

50. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

51. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XIX. EXHIBITS

52. Exhibit 1 shall mean the legal description of the Property which is the subject of this Agreement.

53. Exhibit 2 shall mean a map depicting the Site.

54. Exhibit 3 shall mean a written description of the Site.

In the matter of Transcomm Realty Trust 210 New Boston Street Agreement and Covenant
not to Sue, Docket No. CERCLA-1-99-0076

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

John P. DeVillars
Regional Administrator, Region I
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

Date:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, 1999

Then personally appeared the above named John DeVillars and acknowledged the foregoing
instrument to be his free act and deed before me,

Notary Public
My commission expires:

In the matter of Transcomm Realty Trust 210 New Boston Street, Agreement and Covenant
not to Sue, Docket No. CERCLA-1-99-0076

IT IS SO AGREED:

THE UNITED STATES OF AMERICA

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date:

DISTRICT OF COLUMBIA

_____, ss.

_____, 1999

Then personally appeared the above named Lois Schiffer and acknowledged the foregoing
instrument to be her act and deed before me,

Notary Public
My commission expires:

In the matter of Transcomm Realty Trust 210 New Boston Street, Agreement and Covenant
not to Sue, Docket No. CERCLA-1-99-0076

IT IS SO AGREED:

TRANSCOMM REALTY TRUST

By: _____
Name: _____ Date: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 1999

Then personally appeared the above named _____ and acknowledged the
foregoing instrument to be his / her free act and deed before me,

Notary Public
My commission expires:

TRANSCOMM, INC.

By: _____
Name: _____ Date: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 1999

Then personally appeared the above named _____ and acknowledged the
foregoing instrument to be his / her free act and deed before me,

Notary Public
My commission expires: